

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 93-423-1
	:	
v.	:	
	:	
JEROME ROGERS	:	CIVIL ACTION NO. 99-5196

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

June 26, 2000

Petitioner Jerome Rogers ("Rogers" or "Petitioner") filed a petition for habeas corpus pursuant to 28 U.S.C. § 2255. The Government filed an answer to Rogers's petition. Rogers filed an answer to the Government's answer. After review of the petition, the Government's answer, and Rogers's answer to the Government's answer, the Petition will be denied without an evidentiary hearing.

BACKGROUND

Petitioner was convicted of two counts of robbery in the Court of Common Pleas, Philadelphia County on January 15, 1993 and was sentenced to five to ten years imprisonment in a State Correctional Institution on March 31, 1994. Petitioner pleaded guilty to one count of possession of a firearm by a felon in the United States District Court for the Eastern District of Pennsylvania on August 26, 1994 and was sentenced to thirty-six months imprisonment (twenty-four of which were to run concurrent with the state sentence) that same date. Judgment was entered in the federal case on August 30, 1994 and became final on September

9, 1994. Rogers filed the present petition for a writ of habeas corpus on October 21, 1999. In that petition, Rogers alleges that (1) he was denied the effective assistance of counsel; (2) his rights under the Double Jeopardy Clause were violated as he was tried and convicted in federal court on federal charges after having been tried and convicted in a State court on State charges for the same acts; (3) the federal conviction was based in part on unlawfully obtained evidence; and (4) the United States Attorney denied Petitioner access to an eyewitness who allegedly could have exculpated Petitioner if allowed to testify at trial. Rogers is no longer incarcerated but is currently on supervised release.¹

DISCUSSION

The present petition was filed on October 21, 1999; it is governed by the provisions of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), which became effective on April 24, 1996. See generally Hollman v. Wilson, 158 F.3d 177, 179 (3d Cir. 1998). Under the AEDPA a one-year period of limitations applies to petitions for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2255.

The limitation period shall run from the latest of -
(1) the date on which the judgment of conviction

¹Petitioner meets the "in custody" requirement of 28 U.S.C. § 2255. A § 2255 habeas petitioner is "in custody" if he is serving a period of supervised release. See United States v. Essig, 10 F.3d 968, 970 n.3 (3d Cir. 1993). Rogers, who is serving a period of supervised release, is "in custody" for the purposes of 28 U.S.C. § 2255.

becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action.

(3) the date on which the right asserted was initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255. "[P]risoners whose convictions became final on or before April 24, 1996, must file their § 2255 motions before April 24, 1997." United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997). Rogers's conviction became final before the effective date of the AEDPA. He did not file his § 2255 petition until October 21, 1999, which is over three years after the date on which the AEDPA became effective. Rogers's petition is time-barred.

Petitioner asserts in his answer to the Government's answer that he did not timely file his habeas petition within the statutory period of limitation because he feared retaliation from the governments of the United States and the Commonwealth of Pennsylvania. Petitioner alleges the Pennsylvania and federal governments were engaged in a criminal conspiracy aimed at undermining his rights. Construing Petitioner's argument very liberally, it appears that he is arguing that he was somehow prevented from filing his § 2255 motion because of unconstitutional or illegal action by Pennsylvania and the United

States. Over the years he was incarcerated, Petitioner successfully sent numerous letters to this court protesting matters ranging from procedural irregularities associated with his conviction to prison conditions. In 1995 Petitioner filed an Application to Proceed in Forma Pauperis in conjunction with a Civil Action he filed against Rossman Thompson, Esquire (Petitioner's attorney for his federal trial) and the Federal Defenders of Philadelphia (docket no. 95-534). In light of Petitioner's ongoing communications with this court and his access to various procedural and legal processes while in state or federal penal facilities, his claim that he was prevented from filing a habeas corpus petition because of a criminal conspiracy between the governments of Pennsylvania and the United States is not a sufficient basis for an evidentiary hearing. The present petition will be denied.

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ORDER

AND NOW this 26th day of June, 2000, after careful and independent consideration of the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2255 and petitioner's answer to the Government's answer,

it is **ORDERED** that:

1. The petition filed pursuant to 28 U.S.C. § 2255 is **DENIED WITHOUT AN EVIDENTIARY HEARING.**

2. There is no basis for the issuance of a certificate of appealability.

Norma L. Shapiro, S.J.